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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,751	12/30/2000	Alan Rudnick	38021.010000	9595
54353	7590	12/02/2005		
MANUEL VALCACEL c/o GREENBERG TRAUIG, P.A. 1221 BRICKELL AVENUE MIAMI, FL 33131			EXAMINER GRAYSAY, TAMARA L	
			ART UNIT	PAPER NUMBER
			3623	
DATE MAILED: 12/02/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/752,751

Applicant(s)

RUDNICK, ALAN

Examiner

Tamara L. Graysay

Art Unit

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 5-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-3 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Philippe (US-6643624).

Regarding claim 1, Philippe teaches a system and process for buyers and sellers to engage in commerce comprising central processing unit (30), software for controlling the processing unit (col.5-6, section 1.2, software architecture), storage means (35), server (20) for Internet-based access and use (45, col.6, line4), means to select between a direct sales channel and indirect sales channel for completion of a transaction (the direct sales channel is discussed at col.7, lines 11-29, and the indirect sales channel intermediary is discussed at col. 7, lines 30-60), means for buyers transmitting requests from buyer to system to seller (selecting the buy it link initiates a request at the vendor site), and seller to buyer (confirmation information returned by the vendor (e.g., col.8, lines 4-8).

Philippe lacks specific details about the interrelationship between the direct (buy it link to vendor) and indirect (add it link to virtual check-out counter) sales channels; however, Philippe does disclose embodiments that encompass the direct sales channel approach and the indirect sales channel approach (virtual check-out counter).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Philippe to include both direct and indirect sales channels to accommodate a buyer selecting only one product from one vendor as well as a buyer selecting products from multiple vendors.

Regarding claim 2, Philippe includes means for linking directly to seller ordering systems as mentioned at col. 7, lines 11-29.

Regarding claims 3 and 5, Philippe as applied to claim 1 above, meets all of the limitations of the process claim including the single point of sale insofar as the modification of Philippe to include both a direct sales channel and an indirect sales channel.

Regarding claim 6, Philippe discloses the step of a buyer performing a search and the capability to make a selection (e.g., 314). It is inherent in the Philippe process that sellers are selected based on filter conditions because the buyer searches the information in the database to display information about a seller based on the search terms and the search terms are filter conditions.

Regarding claim 7, Philippe discloses a system that includes a direct sales channel and an indirect sales channel from a single point of purchase (the direct sales channel is discussed at col. 7, lines 11-29, and the indirect sales channel is discussed at col. 7, lines 30-60).

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Philippe lacks specific details about the interrelationship between the direct (buy it link to vendor) and indirect (add it link to virtual check-out counter) sales channels; however, Philippe does disclose embodiments that encompass the direct sales channel approach and the indirect sales channel approach (virtual check-out counter).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Philippe to include both direct and indirect sales channels to accommodate a buyer selecting only one product from one vendor as well as a buyer selecting products from multiple vendors.

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2. Claims 1-3 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dilger (article, Buying strategies) in view of Philippe (US-6643624).

Dilger discloses a combined direct and indirect purchase system and method (e.g., the system includes embedded workflows that route requisitions directly to the supplier or to a purchasing module for manager review, page 3, last paragraph). Dilger is silent as to the specific components of the system other than software to implement the ser-based processes. The system and method included embedded workflows that route requests; therefore, Dilger is capable of being implemented at a single point of sale, as recited in claims 3 and 5-7.

Philippe teaches using a computer processor with a server to implement an Internet-based software application for a purchasing system.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dilger to include a central processing unit and server, such as taught by Philippe, in order to enable the software package to be implemented.

***Response to Arguments***

3. Applicant's arguments filed 16 September 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "true indirect / third party intermediary" and "intermediary in place of the ultimate purchaser as the party with whom the vendors interact" and "an option to direct transactions between the ultimate purchase and the vendor") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

First, the claimed intermediary is not claimed as "true." Even if the intermediary were claimed as "true" the claimed intermediary does not define over the system and process as pointed out in the above rejections. The term "true" cannot be further limiting than the disclosure allows. The disclosure does not define the "true" intermediary. Further, in keeping with subject matter that is permitted under 35 U.S.C. 101, an intermediary cannot be a person.

Second, the claims do not recite an intermediary in place of an ultimate purchaser. The system has been interpreted as including the hardware or combination of hardware and software to perform the claimed functionality not a person or business entity that would be nonstatutory subject matter under 35 U.S.C. 101.

Third, the claims do not recite an option to direct transactions between a purchaser and vendor.

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***Conclusion***


4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamara L. Graysay whose telephone number is (571) 272-6728. The examiner can normally be reached on Mon - Fri from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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